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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1196

CONFEDERATION OF POLICE, a not for profit corporation, and the class of members of the Confederation of Police by James M. Johnson, Alfred H. Marshall, Ella Saunders, Eleanor Protas, Odessa J. Gates, and Tillian Harris, as individuals and on behalf of the class of members of Local 505, Council 19, American Federation of State, County and Municipal Employees, AFL-CIO,

Petitioners,

VS.

THE CITY OF CHICAGO, a municipal corporation, and RICHARD J. DALEY, as Mayor of the City of Chicago,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court and the opinion of the United States Court of Appeals for the Seventh Circuit (Appendix to Petition) have not been reported.

JURISDICTION

The opinion of the United States Court of Appeals for the Seventh Circuit was filed on June 9, 1976. A timely petition for rehearing was denied on November 29, 1976. A petition for Writ of Certiorari was filed on February 28, 1977.

Jurisdiction is invoked pursuant to Title 28, United States Code, Section 1254.

QUESTIONS PRESENTED

Whether petitioners are entitled to salary increases under the Due Process and Equal Protection Clauses of the Fourteenth Amendment over and above those provided by a city appropriation ordinance.

Whether respondents' refusal to provide for salary increases over and above those provided by appropriation ordinance creates an unlawful classification in violation of the Equal Protection Clause of the Fourteenth Amendment.

REASONS FOR DENYING THE WRIT

This petition presents no issue of importance for this Court to decide because the rights of petitioners to salary increases were correctly decided according to long-standing state law that limits municipal employees' salaries only to those amounts actually appropriated.

I.

PETITIONERS HAVE NO RIGHTS UNDER STATE LAW TO SALARIES OVER AND ABOVE THOSE PROVIDED FOR IN THE 1972 APPROPRIATION ORDINANCE

Petitioners ask this Court to review a decision of the United States Court of Appeals for the Seventh Circuit which found that no right exists under Illinois law to salary increases over and above those provided for by the City of Chicago 1972 appropriation ordinance. They contend that all civil service employees of the City of Chicago who were employed prior to 1972 are entitled to step and longevity increases in 1972 although no appropriation was made for such salary increases, and that to deny such increases in salary violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

In *Board of Regents* v. *Roth,* 408 U.S. 564, 33 L.Ed.2d 548, 92 S.Ct. 2701 (1972) this Court defined those attributes of public employment which are protected property rights. The Court stated:

> "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expecta-

> tion of it. He must, instead, have a legitimate claim of entitlement to it." 408 U.S. at 577.

Based on this concept of protected rights the court of appeals determined that petitioners' constitutional claims, as well as their claims under the provisions of the Economic Stabilization Act of 1971, Title 12 United States Code, section 1904 *et seq.*, depended on whether a contractual relationship existed between the petitioners and the City under state law. The court of appeals correctly applied state law and determined that petitioners had no protected right to salary increases.

It is a well-established principle of Illinois law that municipal employees have no contractual rights as to salary. In *Gathemann* v. *City of Chicago,* 263 Ill. 292, 296 (1914) the court stated:

> "It is a general rule, when not qualified or restricted by positive law, that the power that created any office may abolish it in its discretion, and this rule applies to municipal officers. The salaries of such officers may be reduced or otherwise regulated as the municipality may decide. Even though an officer be appointed for a fixed period, yet where he cannot be compelled to serve the whole time such appointment cannot be considered a contract for hire for a stipulated time. Ordinances fixing salaries are not contracts with officers for their full term of office."

As a corollary to this principle the Illinois courts have held that municipal employees are solely entitled to that compensation provided for by law in an appropriation ordinance. *May* v. *City of Chicago,* 229 Ill. 595 (1906); *Koons* v. *Richardson,* 227 Ill. App. 477 (1923); *Stahl* v. *Board of Education of the City of Chicago,* 334 Ill. App. 366 (1948).

Petitioners do not allege that the appropriation ordinance for 1972 provided for the longevity and step increases they seek; the 1972 appropriation contained no such provision. Nevertheless, they claim they are entitled to those salary increases as a matter of constitutional law. This is not the first attempt to seek such an increase. A suit based on the same factual matters as this petition was rejected by the Illinois Supreme Court in *Chicago Patrolmen's Association* v. *City of Chicago,* 56 Ill.2d 497 (1974) which stated that neither the Economic Stabilization Act of 1970 nor the executive orders issued pursuant to the act gave Chicago police officers any additional rights to salary increases beyond those stated in the 1972 appropriation.

The Chief Justice, in his concurring opinion in *Perry* v. *Sinderman,* 408 U.S. 593 (1972), noted that in cases involving state employees, the point should be underscored that the relationship between a state employee and his state employer is a matter of state concern and state law. The Court of Appeals for the Seventh Circuit's opinion fully followed state law as interpreted by the Illinois Supreme Court. Thus this case involves no important question of either state or federal law and no reason exists for granting petitioners' request for a writ of certiorari.

II.

RESPONDENTS' ACTIONS DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE

Petitioners contend that the action of the respondents in eliminating all seniority and longevity increases from the 1972 appropriation ordinance and increasing petitioners' salaries by 5.5% of the amount actually received in 1971 creates unequal treatment among a common group of public

employees in violation of the Equal Protection Clause of the Fourteenth Amendment. They argue that the failure to provide incumbent employees with seniority and longevity salary increases placed them in the same economic position as newly hired employees. Thus, they state, an unconstitutional classification was created. Even assuming that groups of employees were subject to different treatment, the court of appeals, following the standard of *Dandridge* v. *Williams*, 393 U.S. 471 (1970), correctly found that the action of respondents was reasonable and therefore constitutional.

In *Dandridge* v. *Williams, supra,* this Court ruled that an economic classification based on statute will be upheld if any set of facts exists to support the state action and no suspect classification is created. Ample facts exist to support respondents' actions here.

The 1972 appropriation ordinance was passed pursuant to statute on December 10, 1971, at a time when Phase II of the Economic Stabilization Act merely permitted a 5.5% increase in salaries and had as yet not permitted the retroactive payment of increases pursuant to a pay practice established prior to the inception of Phase I wage controls. Had respondents based the 5 to 5.5% increase on the salary that petitioners were scheduled to receive in 1971, as petitioners wish, they would have violated Phase I of the Economic Stabilization Act in that they would have granted an increase in salaries in excess of 5.5% of what petitioners had actually received in 1971. The act of the respondents in enacting a budget pursuant to federal law can hardly be characterized as arbitrary. The City legislated in a reasonable manner given the economic climate of the moment and particularly in the light of the national anti-inflation policy which was firmly established by the Economic Stabilization

Act. In areas of salary classification, the determination of the Chicago City Council should be given great weight when the determination is attacked on equal protection grounds.

The court of appeals correctly determined that petitioners were not treated in an unreasonable manner. Petitioners suggest no reason why this finding was incorrect. Thus no reason exists for a grant of certiorari in this matter.

CONCLUSION

For these reasons, it is respectfully submitted that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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April 18, 1977